



Senate

General Assembly

File No. 566

January Session, 2007

Substitute Senate Bill No. 1448

Senate, April 24, 2007

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT EXTENDING THE STATE PHYSICIAN PROFILE AND
RELATED MALPRACTICE REPORTING REQUIREMENTS TO
CERTAIN OTHER HEALTH CARE PROVIDERS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 20-13j of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2007*):

3 (a) For the purposes of this section:

4 (1) "Department" means the Department of Public Health; [,] and
5 ["physician" means a physician licensed pursuant to this chapter]

6 (2) "Health care provider" means: (A) A physician licensed under
7 this chapter; (B) a dentist licensed under chapter 379; (C) a chiropractor
8 licensed under chapter 372; (D) an optometrist licensed under chapter
9 380; (E) a podiatrist licensed under chapter 375; (F) a natureopath
10 licensed under chapter 373; (G) a dental hygienist licensed under
11 chapter 379a; (H) an advanced practice registered nurse licensed under
12 chapter 378; or (I) a physical therapist licensed under chapter 376.

13 (b) The department, after consultation with the Connecticut Medical
14 Examining Board, [and] the Connecticut State Medical Society, or any
15 other appropriate state board, shall collect the following information to
16 create an individual profile on each [physician] health care provider
17 for dissemination to the public:

18 (1) The name of the medical or dental school, chiropractic college,
19 school or college of optometry, school or college of chiropody or
20 podiatry, school or college of natureopathy, school of dental hygiene,
21 school of physical therapy or other school or institution giving
22 instruction in the healing arts attended by the [physician] health care
23 provider and the date of graduation;

24 (2) The site, training, discipline and inclusive dates of [the
25 physician's] any completed postgraduate [medical] education or other
26 professional education required pursuant to the applicable licensure
27 section of the general statutes;

28 (3) The area of the [physician's] health care provider's practice
29 specialty;

30 (4) The address of the [physician's] health care provider's primary
31 practice location or primary practice locations, if more than one;

32 (5) A list of languages, other than English, spoken at the
33 [physician's] health care provider's primary practice locations;

34 (6) An indication of any disciplinary action taken against the
35 [physician] health care provider by the department, the appropriate
36 state board or any professional licensing or disciplinary body in
37 another jurisdiction;

38 (7) [Any] With respect to a physician, any current certifications
39 issued to the physician by a specialty board of the American Board of
40 Medical Specialties;

41 (8) [The] With respect to a physician, the hospitals and nursing
42 homes at which the physician has admitting privileges;

43 (9) [Any] With respect to a physician, any appointments of the
44 physician to a Connecticut medical school [faculties] faculty and an
45 indication as to whether the physician has current responsibility for
46 graduate medical education;

47 (10) A listing of the [physician's] health care provider's publications
48 in peer reviewed literature;

49 (11) A listing of the [physician's] health care provider's professional
50 services, activities and awards;

51 (12) [Any] With respect to a physician, any hospital disciplinary
52 actions against the physician that resulted, within the past ten years, in
53 the termination or revocation of the physician's hospital privileges for
54 a medical disciplinary cause or reason, or the resignation from, or
55 nonrenewal of, medical staff membership or the restriction of
56 privileges at a hospital taken in lieu of or in settlement of a pending
57 disciplinary case related to medical competence in such hospital;

58 (13) A description of any criminal conviction of the [physician]
59 health care provider for a felony within the last ten years. For the
60 purposes of this subdivision, a [physician] health care provider shall
61 be deemed to be convicted of a felony if the [physician] health care
62 provider pleaded guilty or was found or adjudged guilty by a court of
63 competent jurisdiction or has been convicted of a felony by the entry of
64 a plea of nolo contendere;

65 (14) To the extent available, and consistent with the provisions of
66 subsection (c) of this section, all [medical] professional malpractice
67 court judgments and all [medical] professional malpractice arbitration
68 awards against the [physician] health care provider in which a
69 payment was awarded to a complaining party during the last ten
70 years, and all settlements of [medical] professional malpractice claims
71 against the [physician] health care provider in which a payment was
72 made to a complaining party within the last ten years;

73 (15) An indication as to whether the [physician] health care provider

74 is actively involved in patient care; and

75 (16) The name of the [physician's] health care provider's
76 professional liability insurance carrier.

77 (c) Any report of a [medical] professional malpractice judgment or
78 award against a [physician] health care provider made under
79 subdivision (14) of subsection (b) of this section shall comply with the
80 following: (1) Dispositions of paid claims shall be reported in a
81 minimum of three graduated categories indicating the level of
82 significance of the award or settlement; (2) information concerning
83 paid [medical] professional malpractice claims shall be placed in
84 context by comparing an individual [physician's medical] health care
85 provider's professional malpractice judgments, awards and
86 settlements to the experience of other [physicians] health care
87 providers licensed in Connecticut who perform procedures and treat
88 patients with a similar degree of risk; (3) all judgment award and
89 settlement information reported shall be limited to amounts actually
90 paid by or on behalf of the [physician] health care provider; and (4)
91 comparisons of professional malpractice payment data shall be
92 accompanied by (A) an explanation of the fact that [physicians] health
93 care providers treating certain patients and performing certain
94 procedures are more likely to be the subject of litigation than others
95 and that the comparison given is for [physicians] health care providers
96 who perform procedures and treat patients with a similar degree of
97 risk; (B) a statement that the report reflects data for the last ten years
98 and the recipient should take into account the number of years the
99 [physician] health care provider has been in practice when considering
100 the data; (C) an explanation that an incident giving rise to a
101 professional malpractice claim may have occurred years before any
102 payment was made due to the time lawsuits take to move through the
103 legal system; (D) an explanation of the effect of treating high-risk
104 patients on a [physician's] health care provider's professional
105 malpractice history; and (E) an explanation that professional
106 malpractice cases may be settled for reasons other than liability and
107 that settlements are sometimes made by the insurer without the

108 [physician's] health care provider's consent. Information concerning all
109 settlements shall be accompanied by the following statement:
110 "Settlement of a claim may occur for a variety of reasons that do not
111 necessarily reflect negatively on the professional competence or
112 conduct of the [physician] health care provider. A payment in
113 settlement of a [medical] professional malpractice action or claim
114 should not be construed as creating a presumption that [medical]
115 professional malpractice has occurred."

116 (d) Pending professional malpractice claims against a [physician]
117 health care provider and actual amounts paid by or on behalf of a
118 [physician] health care provider in connection with a professional
119 malpractice judgment, award or settlement shall not be disclosed by
120 the department to the public. This subsection shall not be construed to
121 prevent the department from investigating and disciplining a
122 [physician] health care provider on the basis of [medical] professional
123 malpractice claims that are pending.

124 (e) Prior to the initial release of a [physician's] health care provider's
125 profile to the public, the department shall provide the [physician]
126 health care provider with a copy of the [physician's] health care
127 provider's profile. Additionally, any amendments or modifications to
128 the profile that were not supplied by the [physician] health care
129 provider or not generated by the department itself shall be provided to
130 the [physician] health care provider for review prior to release to the
131 public. A [physician] health care provider shall have sixty days from
132 the date the department mails or delivers the prepublication copy to
133 dispute the accuracy of any information that the department proposes
134 to include in such profile and to submit a written statement setting
135 forth the basis for such dispute. If a [physician] health care provider
136 does not notify the department that the [physician] health care
137 provider disputes the accuracy of such information within such sixty-
138 day period, the department shall make the profile available to the
139 public and the [physician] health care provider shall be deemed to
140 have approved the profile and all information contained [therein] in
141 the profile. If a [physician] health care provider notifies the department

142 that the [physician] health care provider disputes the accuracy of such
143 information in accordance with this subsection, the [physician's] health
144 care provider's profile shall be released to the public without the
145 disputed information, but with a statement to the effect that
146 information in the identified category is currently the subject of a
147 dispute and is therefore not currently available. Not later than thirty
148 days after the department's receipt of notice of a dispute, the
149 department shall review any information submitted by the [physician]
150 health care provider in support of such dispute and determine whether
151 to amend the information contained in the profile. In the event that the
152 department determines not to amend the disputed information, the
153 disputed information shall be included in the profile with a statement
154 that such information is disputed by the [physician] health care
155 provider.

156 (f) A [physician] health care provider may elect to have the
157 [physician's] health care provider's profile omit information provided
158 pursuant to subdivisions (9) to (11), inclusive, of subsection (b) of this
159 section. In collecting information for such profiles and in the
160 dissemination of such profiles, the department shall inform
161 [physicians] health care providers that they may choose not to provide
162 the information described in said subdivisions (9) to (11), inclusive.

163 (g) Each profile created pursuant to this section shall include the
164 following statement: "This profile contains information that may be
165 used as a starting point in evaluating [the physician] a health care
166 provider. This profile should not, however, be your sole basis for
167 selecting a [physician] health care provider."

168 (h) The department shall maintain a web site on the Internet for use
169 by the public in obtaining profiles of [physicians] health care
170 providers.

171 (i) No state law that would otherwise prohibit, limit or penalize
172 disclosure of information about a [physician] health care provider shall
173 apply to disclosure of information required by this section.

174 (j) All information provided by a [physician] health care provider
175 pursuant to this section shall be subject to the [penalties of] penalty for
176 false statement [, pursuant to] under section 53a-157b.

177 (k) Except for the information in subdivisions (1), (2), (10) and (11)
178 of subsection (b) of this section, a [physician] health care provider shall
179 notify the department of any changes to the information required in
180 [said] subsection (b) of this section not later than sixty days after such
181 change.

This act shall take effect as follows and shall amend the following sections:

Section 1	October 1, 2007	20-13j
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JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Public Health, Dept.	GF - Cost	1,799,960	260,000
Comptroller Misc. Accounts (Fringe Benefits)	GF - Cost	49,020	54,180

Note: GF=General Fund

Municipal Impact: None

Explanation

The Department of Public Health (DPH) will incur FY 08 costs of approximately \$1.8 million to expand its current physician profile database system to include dentists, chiropractors, optometrists, podiatrists, naturopaths, dental hygienists, advanced practice registered nurses and physical therapists by 10/1/07. This includes:

YEAR 1	
<u>One Time Costs</u>	
Costs to upgrade computer platform	\$1,200,000
Consultant charges related to staff training	180,000
Supplies; postage to mail survey to 15,150 practitioners	55,000
2.5 Temporary clerical staff for initial data entry & follow-up	100,000
Equipment/Software	4,960
Total - One Time Costs	\$1,539,960
<u>Ongoing Costs</u>	
Department of Information Technology (DoIT) hosting fees	\$120,000
Software license/maintenance fees	50,000
2 Permanent staff (Health Program Associate, Office Assistant)	90,000
Total - Ongoing Costs	\$260,000
Total - Year 1 Costs	\$1,799,960

In FY 09 and subsequent fiscal years, ongoing costs associated with this initiative will be \$260,000 as the temporary clerical staff will not be

required after the initial data entry effort is completed and one-time software and equipment costs will not recur.

Additional costs (\$49,020 in FY 08; \$54,180 in FY 09) will be incurred for associated fringe benefits.¹

It is expected that information concerning each provider's history of medical malpractice or criminal activity will be self-reported. Therefore, no resulting fiscal impact is anticipated for either the Departments of Insurance or Public Safety.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The estimated first year fringe benefit rate for a new employee as a percentage of average salary is 25.8%, effective July 1, 2006. The first year fringe benefit costs for new positions do not include pension costs. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System (SERS). The SERS 2006-07 fringe benefit rate is 34.4%, which when combined with the non pension fringe benefit rate totals 60.2%.

OLR Bill Analysis**sSB 1448*****AN ACT EXTENDING THE STATE PHYSICIAN PROFILE AND RELATED MALPRACTICE REPORTING REQUIREMENTS TO CERTAIN OTHER HEALTH CARE PROVIDERS.*****SUMMARY:**

This bill expands the physician profile the Department of Public Health (DPH) maintains and the requirement to report malpractice information for the profile to additional specified health care providers. These include dentists, chiropractors, optometrists, podiatrists, natureopaths, dental hygienists, advanced practice registered nurses, and physical therapists. With a few exceptions, it establishes the same requirements for these health care providers as for physicians.

Current law requires the profile to include the site, training, discipline, and inclusive dates of the physician's postgraduate medical education required by the licensing laws. The bill expands the requirement to include any postgraduate education but limits it to education that was completed, and applies this requirement to the other health care providers.

The law requires the profile to include the name of the medical school the doctor attended and the graduation date. The bill also requires the name of the dental school, chiropractic college, school or college of optometry, school or college of chiropody or podiatry, school or college of natureopathy, school of dental hygiene, school of physical therapy, or other school or institution giving instruction in the healing arts attended by the health care providers the bill includes and the graduation date.

The bill allows the health care provider's licensing body to restrict, suspend, revoke, or take other appropriate action against a health care provider's license for failure to provide DPH with information needed to complete a profile.

EFFECTIVE DATE: October 1, 2007

HEALTH CARE PROVIDERS PROFILES

Education and Practice Information

The bill requires the profiles to contain information about the health care providers' medical education and practice including:

1. his or her medical or other appropriate healing arts school and graduation date;
2. the site, training, discipline and dates of postgraduate or other professional education;
3. practice specialty;
4. addresses of primary practice location or location;
5. the languages, other than English, spoken at the practice;
6. a list of publications in peer-reviewed literature;
7. an indication as to whether the health care provider is actually involved in patient care; and
8. a list of professional services, activities, and awards.

The law requires the profile of physicians to also include (1) current certification issued by a specialty board of the American Board of Medical Specialties; (2) the hospitals and nursing homes where he has privileges; and (3) appointments to Connecticut medical school faculties and other responsibilities for graduate medical education. But the bill does not require this for the other named health care providers.

The bill requires the health care providers to notify DPH of any

changes in the information about practice specialty, primary practice address, languages spoken, and criminal convictions (see below) within 60 days of the change.

Criminal Convictions

The profile must contain a description of criminal convictions for felonies within the last 10 years. Conviction of a felony means the health care provider pled guilty, was found guilty by a court, or was convicted of a felony from a plea of no contest.

Disciplinary Actions

The profile must contain an indication of any disciplinary action taken against the health care provider by the department, the appropriate state board, or any professional licensing or disciplinary body in another jurisdiction.

Medical Malpractice Claims

The profile must contain, to the extent available, all medical malpractice court judgments, arbitration awards, or settlements against the health care provider where payment was made during the last 10 years. It must also include the name of their malpractice insurance company.

Any reports of judgments or awards must comply with the following:

1. paid claims must be reported in at least three graduated categories of level of award significance;
2. judgment and settlement information must be limited to actual amounts paid by or for the health care provider, and
3. information on an individual health care providers' paid judgments, awards, and settlements must be compared with other state health care providers performing procedures with a similar degree of risk.

The comparisons of malpractice payment data must include (1) an

explanation that health care providers doing certain procedures or treating certain patients are more likely to be sued and that the comparison is for health care providers with a similar degree of risk, (2) a statement that the report covers the last 10 years and that consumers should consider the health care providers' total years of practice, (3) an explanation that the incident causing the malpractice claim may have happened years before any payment was made because of the workings of the legal system, (4) an explanation of the effect of treating high risk patients on a health care provider malpractice history, and (5) an explanation that cases may be settled for other than liability reasons and are sometimes settled by the insurer without the health care provider's consent.

The information on settlements must include the following statement: "Settlement of a claim may occur for a variety of reasons that do not necessarily reflect negatively on the professional competence or conduct of the physician. A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred."

DPH may not disclose to the public pending malpractice claims or actual amounts paid by or for the health care provider because of a judgment, award, or settlement. But the bill does not prevent DPH from investigating and disciplining a health care provider for a claim that is pending.

Advance Copy to Health Care Providers

DPH must give the provider a copy of his profile before it is released to the public. Profile amendments or modifications not provided by the health care provider or produced by DPH must be given to the health care provider to review before release. The health care provider has 60 days from the time DPH mails or delivers the pre-publication copy to challenge the accuracy of any information in the profile and to provide a written statement supporting the challenge. DPH must make the profile available to the public if the health care provider does not notify it of any challenge within that 60-day period.

If the health care provider notifies the department of his dispute with the profile's accuracy, DPH must release it to the public without the disputed information, but with a statement that information in that category is the subject of dispute and not currently available. Within 30 days of receiving notice of the challenge, DPH must review information provided by the health care provider and decide whether to amend the information in the profile. If DPH chooses not to amend, the disputed information must be included in the profile with a statement that the provider disputes it.

Statement on Selecting a Health Care Provider

The act requires the profile to include the following statement: "This profile contains information that may be used as a starting point in evaluating the health care provider. This profile should not, however, be your sole basis for selecting a health care provider."

Other Disclosure Laws

Other state laws that would limit, prohibit, or penalize the disclosure of health care provider information do not apply to the provider profiles.

False Statements

All information provided by the health care provider is subject to penalties for false statement in the second degree, a Class A misdemeanor, which is punishable by a prison term of up to one year, or a fine of up to \$2,000, or both.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 43 Nay 0 (04/09/2007)